



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R06-OAR-2019-0043; FRL-10001-20-Region 6]**

### **Air Plan Approval; Texas; Revisions to Control of Air Pollution by Permits for New Construction or Modification**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the United States Environmental Protection Agency (U.S. EPA) is proposing to approve revisions to the Texas (TX) State Implementation Plan (SIP) submitted on February 22, 2019 that revise the State's New Source Review (NSR) permitting rules contained in Title 30 of the Texas Administrative Code (TAC) Chapter 116. The EPA is also addressing portions of an April 16, 2014, SIP submittal pertaining to provisions regarding Greenhouse Gas (GHG) emissions that were invalidated by the United States Supreme Court. The February 22, 2019, SIP submittal appropriately revises the April 16, 2014, SIP provisions that were impacted by the Court's ruling.

**DATES:** Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket No. 2017-1641-RUL, at <https://www.regulations.gov> or via email to [layton.elizabeth@epa.gov](mailto:layton.elizabeth@epa.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not

submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Elizabeth Layton, 214-665-2136, [layton.elizabeth@epa.gov](mailto:layton.elizabeth@epa.gov). For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at the U.S. EPA Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Layton, Air Permits Section (ARPE), U.S. EPA Region 6, 1201 Elm Street, Suite 500, Dallas, TX 75270, 214-665-2136, [layton.elizabeth@epa.gov](mailto:layton.elizabeth@epa.gov). To inspect the hard copy materials, please schedule an appointment with Ms. Elizabeth Layton or Mr. Bill Deese at 214-665-7253.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we,” “us,” or “our” is used, we mean the United States Environmental Protection Agency.

## **I. Background**

Section 110(a)(2)(C) of the CAA requires states to develop and submit to the EPA for approval into the SIP, preconstruction review and permitting programs applicable to certain new and modified stationary sources of air pollutants for attainment and nonattainment areas that cover both major and minor new sources and modifications, collectively referred to as the New Source Review (NSR) SIP. The CAA NSR SIP program is composed of three separate programs: Prevention of Significant Deterioration (PSD), Nonattainment New Source Review (NNSR), and Minor NSR. The EPA codified minimum requirements for these State permitting programs including public participation and notification requirements at 40 CFR 51.160-51.164. Requirements specific to construction of new stationary sources and major modifications in nonattainment areas are codified in 40 CFR 51.165 for the NNSR program. Requirements for permitting of new stationary sources and major modifications in attainment areas subject to PSD, including additional public participation requirements, are found at 40 CFR 51.166. This action addresses revisions to the Texas SIP submitted on February 22, 2019 by the Texas Commission on Environmental Quality (TCEQ) that amend the State's NSR permitting rules by amending the criteria for air pollution control permits for new construction or modification, as well as make other non-substantive revisions.

Additionally, this action addresses portions of an April 16, 2014, Texas SIP submittal that relate to the permitting of Greenhouse Gas Emissions (GHGs) for Step 2 or "non-anyway" sources.<sup>1</sup> The April 2014 submittal was affected by a United States Supreme Court ruling titled *Utility Air Regulatory Group (UARG) v. EPA* (134 S.Ct. 2427 (2014)) where the Court invalidated those portions of the federal rules that related to the permitting of non-anyway

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<sup>1</sup> For more detailed information please see our Federal Register action at 79 FR 66626 (November 10, 2014). Step 2 or "non-anyway" sources are sources that that would have been considered "major" under EPA's permitting program for PSD only because of their greenhouse gas emissions.

sources.<sup>2</sup> Consequently, the State and EPA determined the portions of the State's SIP submittal that addressed "non-anyway" sources were no longer appropriate for SIP action.<sup>3</sup> As explained in more detail below, the February 22, 2019 GHG related revisions appropriately address the April 16, 2014, GHG provisions that were affected by the Court's decision.

## **II. The EPA's Evaluation**

### *A. Evaluation of the February 22, 2019 SIP Submittal Revisions to the State's New Source Review rules*

On February 22, 2019, the TCEQ submitted revisions to the Texas SIP (Rule Project No. 2018-003-116-AI) revising their rules that address applicable requirements for air pollution control permits for new construction or modification under 30 TAC Chapter 116, Sections 116.114, 116.160, 116.164(a), 116.196, 116.198, 116.310, 116.611, and 116.615. Revisions to 30 TAC Chapter 116 were partly in response to the passage of House Bill (HB) 4181, 85th Texas Legislature, 2017 that amended Texas Health and Safety Code (THSC), §382.055 to provide TCEQ with the option to use an electronic method or system to notify new source review (NSR) air permit holders that an air permit is scheduled for review.

The February 22, 2019 revisions revise the Texas SIP at 30 TAC Sections 116.160(b)(2), 116.164(a), 116.164(a)(3)-(5), 116.196(a), 116.310, 116.611(a), 116.615(2), and 116.615(2)(A)-(D). The revisions to 30 TAC Sections 116.196(a), 116.310, and 116.611(a) provide the State the ability to implement existing rules and regulations pertaining to the control of air quality by air permits utilizing electronic methods for various air permitting processes. These include permit renewal notification for Plant-wide Applicability Limit (PAL) permits, notification to permit holders of approaching permit expiration, and the ability to apply for standard permit registration

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<sup>2</sup> Id. For more detail, please see 81 FR 68110 (October 3, 2016).

<sup>3</sup> Id. See the State's October 1, 2014 letter to EPA that is included in the docket to this action.

via electronic methods. The substantive revisions at 30 TAC Section 116.615(2)(A) clarify registration requirements when a new facility is added to an existing operation authorized under standard permitting. Additional substantive revisions at 30 TAC Section 116.615(2)(B)-(D) clarify notification and registration requirements for changes in the representation of emissions at facilities authorized by standard permits for air quality.

Other amendments to 30 TAC Chapter 116 include revisions that are minor or non-substantive in nature and do not change the intent or substance of the originally approved SIP requirements; these minor and administrative type revisions to 30 TAC Sections 116.114(c)(3)(A), 116.196(b)-(f), 116.198(a), and 116.198(b) update cross references, correct grammar, and renumber existing SIP approved provisions. The accompanying Technical Support Document (TSD) for this action includes a comprehensive analysis and discussion of the submitted revisions to the Texas SIP that includes both the substantive and minor, non-substantive revisions. The TSD is included in the docket for this proposed rulemaking.

The EPA has determined it is appropriate to propose approval of the above-cited February 22, 2019, revisions to the Texas SIP as these amendments to the Texas air permitting process clarify existing processes and promote efficiency by implementing electronic notifications and registrations. These revisions are consistent with federal permitting regulations; therefore, these revisions will not interfere with attainment, reasonable further progress, or any other applicable requirements of the Act.

*B. Evaluation of the April 16, 2014 and February 22, 2019 Revisions to New Source Review Permitting for GHG emissions*

As stated earlier, the State's February 22, 2019, SIP submittal appropriately revises provisions in 30 TAC Section 116 to be consistent with the U.S. Supreme Court's 2014 *UARG v.*

EPA decision. The TCEQ originally submitted revisions to the Texas SIP on April 16, 2014 (adopted March 16, 2014) to address the permitting for GHG emissions.<sup>4</sup> That submittal contained provisions that would have required a permit applicant to conduct PSD review based solely on GHG emissions, commonly referred to as non-anyway or Step 2 GHG permitting. Based on the outcome of the 2014 U.S. Supreme Court decision, provisions that related to the permitting of non-anyway sources in 30 TAC Sections 116.160(a) and 116.164(a)(3) – (5) were no longer appropriate for SIP action. See 79 FR 66626. The February 22, 2019 submittal appropriately removes these provisions consistent with the Court’s decision. Therefore, EPA has determined it is appropriate to approve the February 22, 2019 submitted revisions to 30 TAC Sections 116.160(a) and 116.164(a)(3) – (5) that remove the provisions. The February 22, 2019, revisions ensure that the Texas NSR program is consistent with the EPA’s policy, guidance, case law and regulations for permitting GHG emissions; therefore, these revisions will not interfere with attainment, reasonable further progress, or any other applicable requirements of the Act. The TSD that is included in the docket for this proposed rulemaking contains a detailed analysis and discussion of these revisions.

### **III. Proposed Action**

We are proposing to approve revisions to the Texas SIP that revise the State’s New Source Review permit rules. We are also proposing to approve revisions to the Texas NSR rules related to the permitting of greenhouse gas emissions as being consistent with federal requirements. As explained in this proposed action and the accompanying TSD, we have determined that the revisions submitted on February 22, 2019, were developed in accordance with the CAA and EPA’s regulations, case law, policy, and guidance for NSR permitting.

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<sup>4</sup> We approved much of this submittal on November 10, 2014 (70 FR 66626). Docket No. EPA–R06–OAR–2013–0808.

Therefore, under section 110 of the CAA, the EPA proposes approval of the following revisions adopted on October 31, 2018 and submitted February 22, 2019:

- Revisions to 30 TAC Section 116.114;
- Revisions to 30 TAC Section 116.160;
- Revisions to 30 TAC Section 116.164(a);
- Revisions to 30 TAC Section 116.196;
- Revisions to 30 TAC Section 116.198;
- Revisions to 30 TAC Section 116.310;
- Revisions to 30 TAC Section 116.611; and
- Revisions to 30 TAC Section 116.615.

#### **IV. Incorporation by Reference**

In this action, we are proposing to include in a final rule, regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Texas regulations as described in the Proposed Action section above. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and in hard copy at the EPA Region 6 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

#### **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to

approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: October 25, 2019.

**David Gray,**

*Acting Regional Administrator, Region 6.*

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